APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1157

EDWARD J. ROSEWELL, etc., et al.,

Petitioners,

vs.

LA SALLE NATIONAL BANK, TRUSTEE, etc.,

Respondent.

On Writ Of Certiorari To
The United States Court Of Appeals
For The Seventh Circuit

PETITION FOR CERTIORARI FILED JANUARY 26, 1980
CERTIORARI GRANTED MARCH 17, 1980

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

September 19, 1978—
Plaintiff's Complaint filed in the United States District Court for the Northern District of Illinois, Eastern Division.

November 3, 1978—
Defendants' Motion to Dismiss filed.

November 13, 1978—
Plaintiff filed Motion for Preliminary Injunction, with Affidavit of Patricia Cook.

November 30, 1978—
Order entered granting Defendants' Motion to Dismiss, and denying Plaintiff's Motion for Preliminary Injunction.

December 4, 1978—
Plaintiff-Appellant filed Notice of Appeal.

August 24, 1979—
Opinion and Judgment of the Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LA SALLE NATIONAL BANK, Trustee under Trust No. 44891, Plaintiff, vs. EDWARD J. ROSEWELL, Treasurer of Cook County, and THOMAS M. TULLY, Assessor of Cook County, Defendants.	No. 78 C 3746

COMPLAINT

(Filed September 19, 1978)
(Appendices omitted)

LaSalle National Bank, Trustee under Trust No. 44891 of which Patricia Cook is the sole beneficiary, complains of Edward J. Rosewell, Treasurer and Ex-Officio County Collector of Cook County, and Thomas M. Tully, Assessor of Cook County:

The Parties

1. LaSalle National Bank, Trustee under Trust No. 44891, is a national bank with its office in Chicago. It is the owner of real property in the Village of East Chicago Heights, Illinois. Trust No. 44891 is an Illinois land trust. Patricia Cook, a black resident of Cook County, is the sole beneficial owner thereof, has so been at all times pertinent to these proceedings and is authorized under the terms of the indenture to bring

this action. She is the real party in interest and will be referred to as plaintiff throughout this Complaint.

2. Edward J. Rosewell is the Treasurer and ex-officio County Collector of Cook County. Pursuant to the provisions of the Revenue Act of 1939, as amended, Chapter 120 Illinois Revised Statutes §§ 482, *et seq.*, he has the duty to collect real estate taxes levied against property in Cook County. Thomas M. Tully is the Assessor of Cook County. Pursuant to the provisions of the Revenue Act and of the Illinois Constitution, Article IX § 4, he has the duty to assess for tax purposes all non-exempt real property in Cook County. Both officials held their respective offices at all times pertinent to this Complaint.

Jurisdiction

3. Jurisdiction lies under 28 U.S.C. § 1343(3), venue under 28 U.S.C. § 1391.

The Cause of Action

4. The cause of action arises out of a violation by defendants, acting under color of State law, of plaintiff's civil rights of due process guaranteed her by the 14th Amendment to the United States Constitution. It is based upon 42 U.S.C. § 1983 which provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

5. Plaintiff is the owner of a 22-apartment building at 1400 Lincoln Highway in the Village of East Chicago Heights described as:

> The West 89.33 feet of Lot 17 in Block 7 in Lincoln Woodlawn Gardens Subdivision of Part of North 1599 feet West ½ of the South East ¼ North and West of center line of Deer Creek Section 23, Township 35 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

The property is improved with an apartment building containing 22 efficiency type apartments, one of which serves as an office for the building. East Chicago Heights is an all Negro community in Thornton Township. It has the lowest median income and lowest median home value of any village or town in Cook County.

6. The property was purchased from the FSLIC in 1972 in an arms length sale for $45,000.00. On January 1, 1977, it had a fair cash value of $46,000.00, and was indexed, assessed and taxed as follows:

Permanent Number	Volume	Assessed Valuation	Equalized Valuation	Rate	Tax
32-23-414-054	16	52,150	73,808	8.274	$6,106.00

A copy of plaintiff's tax bill for 1977 is appended as Exhibit "A".

7. Article IX, Section 4 of the Illinois Constitution provides in pertinent part:

> "§ 4. Real Property Taxation
>
> (a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county."

8. On January 1, 1977, Chapter 120 Illinois Revised Statutes § 501a provided:

"501a. Classification under Constitution—Necessity for ordinance.) § 20a. Where real property is classified for purposes of taxation in accordance with Section 4 of Article IX of the Constitution and with such other limitations as may be prescribed by law, such classification must be established by ordinance of the county board. If not so established, the classification is void. Added by P.A. 78-700, § 1, eff. Jan. 1, 1974."

9. Since January 1, 1974, there has been in effect an ordinance in Cook County #COM 76815 of December 17, 1973, establishing a system of classifying real estate for the purposes of assessment for taxation which provides in pertinent part:

"Section 2. Real estate is divided into the following assessment classes:

Class 1: Unimproved real estate or real estate used as a farm.

Class 2: Real estate used for residential purposes when improved with a house, an apartment building of not more than six living units, or residential condomin-

ium, a residential co-operative or a government-subsidized housing project if required by statute to be assessed in the lowest assessment category.

Class 3: All improved real estate used for residential purposes which is not included in Class 2.

Class 4: Real estate owned and used by a not-for-profit corporation in furtherance of the purposes set forth in its charter unless used for residential purposes. If such real estate is used for residential purposes it shall be classified in the appropriate residential class.

Class 5: All real estate not included in any of the above four classes.

Section 3. The Assessor shall assess, and the Board of Appeals shall review assessments on, real estate in the various classes at the following percentages of market value:

Class 1:	—	22%
Class 2:	—	17%
Class 3:	—	33%
Class 4:	—	30%
Class 5:	—	40%"

10. Notwithstanding that plaintiff's property is in Class 3 and therefore was required to be assessed in 1977 at $15,180 or 33% of market (fair cash) value, it was nonetheless assessed by defendant Tully at $52,150 or at 113% thereof. In Cook County, property generally in Class 3 was assessed at 33% of market value in 1977. Plaintiff thus has a lien for taxes against her property (Chapter 120, Illinois Revised Statutes, § 697) for, and is required to pay, almost three and one-half times the taxes levied against property of the same class generally throughout the County.

11. Although required to assess all properties throughout the County uniformly within their respective classes, defendant Tully has knowingly as official policy or governmental custom maintained, adopted or promulgated policy statements, regulations, decisions and systems of assessment which have produced egregious disparities in assessments throughout the County. Disparities in over-assessment of which plaintiff complains are far greater in number and size in older, inner city and county areas, owned, inhabited or used to a larger extent by minorities and poorer people.

12. In making his assessments for 1977, defendant Tully had knowledge of the discrimination visited upon plaintiff. In each of the tax years 1974, 1975, 1976 and 1977, plaintiff sought administrative relief by filing complaints as to her assessments with the Board of Appeals of Cook County. In these complaints, she set forth facts, as alleged herein, with respect to such discrimination. That body referred each complaint to the defendant Tully for recommendation and the latter recommended "no change" in the assessment. Further, for over 20 years last past, the Illinois Department of Local Government Affairs and its predecessor in function, the Illinois Department of Revenue, have conducted official studies to determine the ratios of assessed valuation to fair cash value of properties in each of the 102 counties of Illinois. These studies are published annually and, for Cook County, were prepared from data supplied by the defendant Tully and the County of Cook. Tully knows of these studies and their contents. For example, for the year 1975, the latest year in print, the studies show that Tully assessed Class 3 property in such fashion that, for the County as a whole, property in this Class was assessed as low as 3% and as high as 973% of market value. The lowest twenty-five percent of all such

properties was assessed at less than 25% and the highest twenty-five percent at more than 50% of market value; while the lowest 10% was assessed at less than 18% and the highest 10% at more than 96% of such value. The greatest disparities and hence discrimination occurred in Assessment District 4 wherein plaintiff's property is situated. This District includes the south side of Chicago and the south suburban area, areas containing large concentrations of minorities and poorer people. A copy of the 1975* study is appended as Exhibit "B". The same discrimination and disparities resulting therefrom existed for 1977.

13. Plaintiff has exhausted her administrative remedies before the Board of Appeals of Cook County for 1977 and has received no relief therefrom. Her only remedy at law now requires her to pay in full the taxes levied against her property, viz $6,106.00, which includes the illegal moiety of $4,331 and the legal portion of $1,775, and thereafter sue for refund under the provisions of §§ 675 and 716 of Chapter 120, Illinois Revised Statutes, in the Circuit Court of Cook County in the defendant Rosewell's annual application proceedings. These proceedings will be commenced in late November or early December of this year. The customary delay in receiving refunds upon successful prosecution of such a suit is 2 years.

14. Plaintiff was required to pay similar exorbitant and discriminatory taxes for the years 1974, 1975 and 1976 and received refunds totaling approximately $12,200 for the three years in May of this year. Such refunds were the result of suits filed therefor in the Circuit Court of Cook County on defendant Rosewell's annual applications for such years. No interest may be

* The latest year in print.

paid upon tax refunds under Illinois law and plaintiff received none, notwithstanding that Cook County and other cognizant taxing bodies had the use of her funds in the form of illegally exacted taxes in the approximate amounts of $4,600 for 1974, $3,650 for 1975, and $3,950 for 1976, for periods of 3, 2 and 1 years respectively. At 8% interest, the average prime rate for the 3-year period, plaintiff lost approximately $2,000 for the use of her money or, in the alternative, was required to borrow money at appreciably more than the prime rate to pay the taxes so as to be able to avail herself of the only source of judicial review of her assessment and, therefore, the only remedy at law provided her by the laws and Courts of Illinois.

15. Requiring plaintiff to pay taxes upon her property in 3½ times the lawful amount and the amount at which property in the same class generally is assessed deprives her of rights of equal protection and due process secured to her under the 14th Amendment to the United States Constitution and under Article 1, § 2, of the Illinois Constitution. It further deprives her of rights of uniformity in taxation secured to her under Article IX, § 4, of the State Constitution and under the Revenue Act.

16. Plaintiff has no adequate remedy at law in this or any other court and has no plain, speedy and efficient remedy in the courts of Illinois. She has no grounds for equitable relief in the State courts, being able financially to pay her taxes in full and sue for refund albeit at substantial expense, loss and burden. Plaintiff realleges that under Illinois law, she may not receive interest on refunds of taxes.

17. Plaintiff has not paid her 1977 taxes which were due in part on March 1, 1978 with the final installment

due on August 1, 1978. She is willing and able to pay the just moiety of the taxes extended against her property. Unless enjoined the defendant Collector is about to and will, under provisions of §§ 706, *et seq.*, of Chapter 120, Illinois Revised Statutes, advertise that he will and thereafter proceed to apply for judgment and order of sale against plaintiff's property for the lien of delinquent taxes and thereafter sell her property for such lien. Such procedures will cause irreparable harm to plaintiff resulting either in loss to her of her property or requiring her to redeem from sale at penalty interest approximating 24% per year.

18. The legal and correct amount of plaintiff's taxes for 1977 is $1,776 based upon a fair market value of $46,000, a Class 3 factor of 33%, a multiplier of 1.4153 and a tax rate of $8.274 per $100.00 of equalized valuation.

WHEREFORE, plaintiff prays for a preliminary and permanent injunction enjoining the defendant Rosewell from listing, advertising, proceeding to judgment and order of sale and selling plaintiff's property for any amount in excess of the fair and legal taxes against her property which she prays this Court to find and which she will promptly pay.

LA SALLE NATIONAL BANK,
Trustee under Trust No. 44891
By /s/ James L. Fox
Its Attorney

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LA SALLE NATIONAL BANK, Trustee under Trust No. 44891, Plaintiff, vs. EDWARD J. ROSEWELL, Treasurer of Cook County, and THOMAS M. TULLY, Assessor of Cook County, Defendants.	No. 78 C 3746

MOTION TO DISMISS

(Filed November 3, 1978)

Now come defendants, EDWARD J. ROSEWELL, Treasurer of Cook County, and THOMAS M. TULLY, Assessor of Cook County, by their attorney, BERNARD CAREY, State's Attorney of Cook County, Illinois, and for their Motion to Dismiss state as follows:

1. Actions involving state tax assessments do not fall within the purview of 28 U.S.C. 1343 and 42 U.S.C. 1983.

2. The jurisdiction of the United States' District Courts to enjoin the assessment, levy or collection of state taxes where there is a plain, speedy and efficient remedy in the state courts is barred by 28 U.S.C. 1341.

3. Illinois provides taxpayers with a plain, speedy and efficient remedy by way of payment of the alleged

excessive taxes under protest and objection at the Collector's annual Application for Judgment. See Ill. Rev. Stat. 1977, ch. 120, §§ 675 and 716, and Clarendon Associates v. Korzen, 56 Ill. 2d 101 (1973). This remedy is plain, speedy and efficient. *Bland v. McHann*, 463 F.2d 21 (5th Cir. 1972), *cert. denied*, 410 U.S. 966 (1973); *Great Lakes Dredge and Dock Co. v. Huffman*, 319 U.S. 293 (1943); *Matthews v. Rodgers*, 283 U.S. 52 (1932).

4. The mere denial of interest on a tax refund, after an alleged excessive assessment or tax is judged to be actually excessive, is insufficient to find that a state court remedy is not "plain, speedy and efficient." *Bland v. McHann*, 463 F.2d 21 (5th Cir. 1972), *cert. denied*, 410 U.S. 966 (1973); *Board of Commissioners of Jackson County, Kansas v. United States*, 308 U.S. 343 (1939).

5. The doctrine of comity requires this court to abstain because plaintiff has a state court remedy.

6. Plaintiff's Complaint fails to state a claim.

WHEREFORE, defendants respectfully move this court to dismiss plaintiff's Complaint.

BERNARD CAREY
State's Attorney of Cook County

By /s/ Michael F. Baccash
Assistant State's Attorney
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443-5444

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LA SALLE NATIONAL BANK, Trustee under Trust No. 44891, Plaintiff, vs. EDWARD J. ROSEWELL, Treasurer of Cook County, and THOMAS M. TULLY, Assessor of Cook County, Defendants.	No. 78 C 3746

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

(Filed November 13, 1978)

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, plaintiff respectfully moves this Court to issue its preliminary injunction enjoining and restraining defendant, Edward J. Rosewell, Treasurer and ex-officio County Collector of Cook County, his agents and attorneys, from proceeding to judgment and order of sale, selling or attempting to sell plaintiff's property designated by Permanent Index No. 32 23 414 054.

In support thereof, plaintiff states:

1. On September 19, 1978, plaintiff filed a Complaint seeking a preliminary and, thereafter, permanent injunction against the defendant County Collector, enjoining him from proceeding to judgment against and order of sale of plaintiff's property for 1977 real estate taxes for

any amount in excess of the legal and fair taxes thereagainst.

2. The fair cash value of plaintiff's property on January 1, 1977 was $46,000.00. Pursuant to the pertinent provisions of Cook County Ordinance No. COM 76 815 of December 17, 1973, plaintiff's property should have been assessed at 33% of fair cash value, i.e., at $15,180.00, with a resulting tax liability of $1,778.00. Instead, defendant Tully assessed the property at $52,150.00, or at 344% of the legal amount and taxes in the amount of $6,106 were extended upon the excessive assessment and are now a lien upon the property which the defendant Collector is seeking to reduce to judgment and order of sale.

3. Defendants, acting under color of State law, viz. the Revenue Act of 1939, Chapter 120, Illinois Revised Statutes §§ 482, *et seq.*, have violated plaintiff's rights of due process and equal protection guaranteed it by the 14th Amendment to the Constitution of the United States. Such violation is actionable under 42 U.S.C. § 1983.

4. Plaintiff is ready and willing to pay the proper and just amount of real estate taxes on the property in the amount of $1,778.00, plus such statutory interest as may have accrued.

5. Plaintiff has no plain, speedy and efficient remedy at law in the courts of Illinois. Plaintiff's sole legal remedy is provided by §§ 675 and 716 of Chapter 120, Illinois Revised Statutes, under which plaintiff is required to pay the taxes in full and under protest and thereafter sue for refund in the Circuit Court of Cook County. This remedy is neither plain, speedy nor efficient, since there is a two year or longer delay in receiving refunds upon

successful prosecution of such a suit and Illinois law expressly provides that no interest shall be paid on refunds received.

6. Plaintiff will suffer irreparable harm if the defendant Collector proceeds to judgment against and sells the property for the lien of the excessive and illegal moiety of the tax. The only relief from such a sale is redemption requiring payment of the tax in full plus penalty interest levied at the rate of 12% every six months. If the property is redeemed, the issue of relief is rendered moot; if not redeemed, plaintiff will be divested of title to a $46,000 building for the amount of the taxes sold, i.e., $6,106.00.

7. Although injury to the plaintiff would be irreparable should this Motion be denied, if it be granted neither the defendants nor the public will suffer harm or burden. The lien of taxes will continue against plaintiff's property together with interest thereon. Further, the public's interest in proper administration of the tax laws will be served by the issuance of an injunction.

8. There is no meritorious defense either at law or on the facts to plaintiff's cause of action and plaintiff thus has a reasonable likelihood of prevailing ultimately.

9. In further support of this Motion, plaintiff appends hereto the Affidavit of the beneficiary of the plaintiff land trust, exhibits thereto and its memorandum of law.

LaSalle National Bank, Trustee
under Trust No. 44891

By /s/ James L. Fox
Its Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LA SALLE NATIONAL BANK, Trustee under Trust No. 44891, Plaintiff, vs. EDWARD J. ROSEWELL, Treasurer of Cook County, and THOMAS M. TULLY, Assessor of Cook County, Defendants.	No. 78 C 3746

AFFIDAVIT

(Appendices omitted)

PATRICIA COOK, on oath, states that she has personal knowledge of the facts set forth in this Affidavit and if called as a witness could and would testify competently thereto:

1. She was the beneficial owner of LaSalle National Bank Trust No. 44891 on January 1, 1977 and has been at all relevant times. A copy of the Trust Agreement is appended hereto as Exhibit "A".

2. The property which is the subject matter of this suit is improved with a 22-apartment building. All of the apartments are efficiency units. It was purchased in an arms length transaction from the FSLIC in 1972 for $45,000 and on January 1, 1977 had a fair cash value of $46,000.

3. Affiant procured an appraisal of the property in 1976 from Donald A. Engel, MAI, appraising the

property at $46,000.00 A copy thereof is appended as Exhibit "B" to this Affidavit. No change in the physical structure other than normal wear and tear occurred between February 3, 1976, the date of appraisal, and January 1, 1977, the assessment date; and no change in fair cash value occurred in that period. As of the date of this Affidavit, affiant offers to sell the property for the above appraised value.

4. Affiant paid taxes of approximately $6,000 each year for 1974, 1975 and 1976 under protest and sued for refund and received refunds of $4,600 for 1974, $3,650 for 1975 and $3,950 for 1976 after waiting for 3, 2 and 1 year respectively. Affiant received no interest on these refunds.

5. The Village of East Chicago Heights is an all black community with the lowest per capita income and lowest value of residential properties in the County as shown by the DePaul University urban studies. Property values are greatly depressed in the Village and many homes are boarded up and abandoned, notwithstanding efforts of the FHA and other governmental agencies to remove or renovate blighted properties and areas.

And further she sayeth not.

By /s/ Patricia Cook

[Jurat omitted in printing.]